IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

MFA.No. 290 of 2001(B)

OPMV.1498/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT: CLAIMANT

RAJAPPAN NAIR @ RAJAPPAN 119,
TAMBAT LANE, OZAR
NASIK DISTRICT, MAHARASHTRA.

ADDL. APPELLANTS IMPLEADED

2. LEELA BAI R.NAIR, SHIVANJALI BUNGLOW,
SHIVANJALI NAGAR,
BURKULE HALL, AMBAD LINK ROAD,
NASIK 422 010.

3. ROSHNI RAJAPPAN NAIR,
SHIVANJALI BUNGLOW.
SHIVANJALI NAGAR, BURKULE HALL
AMBAD LINK ROAD, NASIK 422 010.

4. RAKEHS RAJAPPAN NAIR,
SHIVANJALI BUNGLOW,
SHIVANJALI NAGAR, BURKULE HALL,
AMBAD LINK ROAD, NASIK 422 010.

ADDL. APPELLANTS 2 TO 4 ARE IMPLEADED AS PER ORDER DT.31.07.07 IN IA. NO.1584/2007.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

MFA. NO.290/2001

RESPONDENTS: RESPONDENTS
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1. V.MANI RATHINAM, NO.23 D,
MUNDY STREET VELLORE,
N.A.A.DISTRICT NAMIL NADU.

2. N.GOVINDA RAJ , PADIARCHETTY STREET,
VELLORE, N.A.A.DISTRICT,
TAMIL NADU.

3. BRANCH MANAGER, UNITED INDIA
ASSURANCE CO. LTD., VELLORE 632 004.

BY ADV. SRI.SOJAN JAMES
SMT.P.A.REZIYA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31 / 07 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J. B. KOSHY &
K.P.BALACHANDRAN, JJ.

M. F. A. No.290 of 2001

Dated this the 31st day of July, 2007

JUDGMENT

Koshy, J.

The appellant (his legal representatives were impleaded as he died on 31.07.2006) met with a motor vehicle accident on 04.05.1994. He was doing his own business in Nasik. The accident occurred in the Thrissur-Palakkad National Highway while he was on his way from Nasik to his home at Thiruvalla in a Maruti Van along with his wife, two children, his sister-in-law etc. a goods vehicle bearing registration No.TAJ 641 driven by the second respondent and insured by the third respondent Insurance Company came from the opposite side and dashed against the van. As a result of the accident, all including the appellant suffered very serious injuries. He claimed a total compensation of Rs.10 lakhs. But the Tribunal awarded a total compensation of Rs.1,04,000/-. Only the quantum of compensation is disputed in this appeal.

2. As a result of the accident, he suffered the following injuries:

"1. Lacerated wounds - left side of face 4 x 1 1.5 c.m. and 6 x 1 x 1.5 c.m. bone deep.

2. Fracture of femur (R).

3. Compound fracture of tibia both bones (R).

4. Head injury.

5. Haematoma and deformity of right thigh exposing fractured bone.

6. Lacerated wound (L) foot first web space.

7. Intra ventricular haemorrhage.

8. Left pupil pin point non-reacting."

He was an inpatient in the hospital for 62 days and immobilised for about an year. With regard to his treatment, tribunal observed as follows:

"After the accident, the petitioner was taken to West Fort Hospital, Thrissur as evident from Ext.A8 discharge summary issued by the said hospital. He who was admitted on 4.5.1994 was discharged on 10.6.1994. Investigation revealed that he had sustained fracture to right femur and fracture to both bones of right leg. CT scan revealed intra cranial haemorrhage also. IM nailing, bone grafting and plastering were done on 27.5.1994. He was treated with antibiotics and analgesics. The discharge summary would show that the hospital stay was uneventful.

It is stated by PW1 that since his native place is at Thiruvalla, for convenience, he was referred to Pushpagiri Hospital, Thiruvalla for subsequent treatment. Though it is stated in the petition that he was treated at West Fort Hospital till 20.6.1994, the medical records produced by him would reveal that it is not true and he was discharged from West Fort on 10.6.1994 itself. Ext.A21 is the reference letter issued by Dr. V.I. Simon of West Fort Hospital, Thrissur on 8.6.1994 addressing Dr. Varghese Chacko of the Pushpagiri Hospital, Thiruvalla referring the petitioner to that hospital. Ext.A7 is the copy of the discharge note issued by the Pushpagiri Hospital, Thiruvalla which would go to show that he was admitted to that hospital on 20.6.1994 and was discharged on 27.6.1994. That would go to show that after discharge from West Fort Hospital on 10.6.1994 he was taking rest at his home at Thiruvalla till 20.6.1994. At Pushpagiri Hospital, long leg cast which was given at West Fort Hospital was removed and hinge cast was given. He was later discharged on 27.6.1994. Ext.A9 discharge summary issued by the Department of Orthopaedics of Pushpagiri Hospital would go to show that the petitioner was again admitted to that

hospital on 28.7.1994. This time PTB cast was given and he was discharged on 8.8.1994. The same document would also reveal that he was admitted to the same hospital on 12.9.1994 for the removal of PTB cast. This time crutch walking was advised and he was discharged on 15.9.1994. Ext.A18 which is another discharge note would fortify the contents of Ext.A9 discharge summary. From the petitioner;s side he has produced Ext.A19 which is a photocopy of the certificate issued by one Dr. Devaprasad of Pushpagiri Hospital which reads as follows:

> "This is to certify that Mr.Rajappan Nair, 38 years (male) has been seen by me and has evidence of diffused axonal injury and cognitive impairment."

Ext.A10 disability certificate was produced to show that he has permanent disability of 25%. Tribunal did not rely on the same as the doctor who issued the certificate was not examined, but, assessed Rs.25,000/- for disability on a rough and ready estimate for the following reasons:

> ".... On the date of the trial, I had occasion to see the petitioner. There is a slight bent on the lower part of the right leg. Certain scars are also left at the region where the internal fixations were

> done. There is a scar on his face also. Considering the fact that the petitioner had sustained a fracture to his femur and both bones of the right lower leg it is reasonable to presume that the same would cause some discomfort to the petitioner. The same has to be compensated. The petitioner was 38 years at the time of accident. Considering all these facts into account I am of the view that he has to be awarded a gross sum on that count on a rough and ready estimate. Hence, I am awarding a sum of Rs.25,000/- on that count."

Disability certificate was marked by consent. There was no request by the insurance company to get the appellant examined by the medical board. According to the claimants, his early death was one of the after effect of the accident. Tribunal ought to have calculated compensation for 25% disability as assessed by the medical practitioner. With regard to his monthly income, he was doing the business of dealership in the rubber at Nasik. Ext.A26 is his licence for procuring raw rubber. Ext.A27 is the certificate from Rubber Board. Exts.A11 to A13 and A31 etc. were produced to show that he was an income-tax assessee. He was also doing the business of designing upholsteries and manufacturing form beds. Ext.A13 is the

income-tax return for the accounting year 1995-96 (1994-95 assessment year). Profits and gains from his business during the said assessment year is Rs.1,14,955/-. According to him, his income per month is Rs.40,000/-. Due to increase in money value, turn over was growing, but, according to him, if he was well, he could have done better. Tribunal has taken only Rs.3,000/- as monthly income. He also stated that after the accident, he was compelled to engage a driver. Considering the fact that he was an income-tax payee and considering the documents, we are of the opinion that a higher amount ought to have been taken as monthly income. But, for the purpose of calculation of compensation, we are not changing the same. He was aged 38 at the time of accident. He died on 31.7.2006 after 12 years of the accident. Therefore, we take 12 as the multiplier. If that be so, compensation payable for 25% disability will be Rs.3,000 x 12 x 25 x $\frac{12}{100}$ = Rs.1,08,000/-. Therefore, additional compensation payable is Rs.83,000/- for disability and loss of earning power. If second schedule is applied, multiplier will be 16. It was also contended that he died at the age of 50. His early death is due to the implication of the accident.

But, there is no proof for the same though accident and its after effects must have accelerated his death. But, we are awarding compensation only for 25% disability.

3. It was argued that compensation awarded under other heads are also meagre. But, considering the total compensation awarded, we are not enhancing the same. The additional compensation of Rs.83,000/- over and above the amount decreed by the tribunal shall be deposited by the third respondent insurance company with 8% interest from the date of application till its deposit. On deposit, additional appellants (vide I.A.No.1584/2007) are entitled to withdraw the same in equal proportion.

The appeal is allowed partly.

J.B. KOSHY
JUDGE

K.P.BALACHANDRN
JUDGE

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